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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re R.M., a Person Coming Under the
Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

J.M.,

Defendant and Appellant.

D075339

(Super. Ct. No. J519913)

APPEAL from an order of the Superior Court of San Diego County, Kimberlee A. Lagotta, Judge. Affirmed.

Elizabeth C. Alexander, under appointment by the Court of Appeal, for Defendant and Appellant.

Thomas E. Montgomery, County Counsel, Caitlin E. Rae, Chief Deputy County Counsel, and Patrice Plattner-Grainger, Deputy County Counsel, for Plaintiff and Respondent.

J.M. (Father) appeals a dispositional order entered in a juvenile dependency proceeding involving his five-year-old daughter, R.M. The San Diego County Health and Human Services Agency (the Agency) initiated the dependency proceeding after Father instigated an armed, multi-hour standoff with the police during which he reportedly shot a firearm at police officers, threatened to kill police officers, and used R.M. as a "human shield" to protect himself during the confrontation. On appeal, Father claims that the juvenile court erred by approving a case plan provision requiring him to submit to random and on-demand drug and alcohol testing to promote family reunification.

We conclude that the juvenile court acted well within its discretion when it approved the drug and alcohol testing provision of Father's case plan. The juvenile court received evidence during the jurisdiction and disposition hearing indicating that Father has a history of heavy drug and alcohol use in the presence of his children, including R.M., and was under the influence of drugs and/or alcohol during the police standoff giving rise to the dependency proceeding. In light of this evidence, the juvenile court reasonably concluded that Father's drug and alcohol use posed a potential risk of interfering with his ability to reunify with R.M. and should be addressed as part of his reunification plan. Therefore, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

" 'In accord with the usual rules on appeal, we state the facts in the manner most favorable to the dependency court's order.' " (*In re D.C.* (2015) 243 Cal.App.4th 41, 45.)

A. *The SWAT Standoff*

On November 4, 2018, police responded to a report of a verbal altercation between Father and another individual outside the home Father shared with his girlfriend, V.L. (Mother), and their daughter, R.M. According to the responding officers, Father became combative when the police arrived, brandished a rifle, and repeatedly screamed he would kill the officers. It was alleged that he fired two rounds at the officers, which led to an armed standoff with the police department's Special Weapons and Tactics (SWAT) team. Father reportedly kept R.M. in front of him and used her as a "human shield" during the standoff. Mother remained inside the home, despite police orders that she come out with R.M.¹ After six or seven hours, Father and Mother surrendered. They were arrested and charged with child endangerment, and Father was charged with assault on a peace officer with a firearm. R.M. was released into the care of a paternal aunt.

B. *Dependency Petition and Detention*

A few weeks after the SWAT standoff, the Agency filed a dependency petition under Welfare and Institutions Code section 300, subdivision (b).² The petition alleged that R.M. had suffered, or was at a substantial risk of suffering, serious physical harm or illness due to her parents' failure or inability to supervise or protect her, as evidenced by their conduct during the SWAT standoff.

¹ Mother has not appealed the juvenile court's order. Therefore, we reference facts regarding Mother only to the extent they are relevant to Father's appeal.

² All further statutory references are to the Welfare and Institutions Code.

The detention report described several interviews that child welfare service social workers conducted of Father, R.M., and the paternal aunt with whom R.M. was placed, among other individuals. The paternal aunt informed the interviewing social worker that the family disputed the police department's reports of the SWAT standoff. She claimed Father did not own a firearm and was merely playing a guitar on his porch, which police mistook as a rifle. The aunt believed Father had been under the influence of prescription medication during the standoff because a large bag of anti-psychotic pills and narcotics was recovered from Father's home.

Police recovered a BB gun, .762 caliber casings, and .38 caliber spent casings from Father's home. However, Father contended the BB gun belonged to his adult son, maintained he did not personally own a firearm, and claimed he was playing a guitar on his porch during the SWAT standoff. Father also denied making threatening comments towards law enforcement or using R.M. as a "human shield." During the social worker's interview with R.M., however, she stated that Father "was lying about having a gun and he really had a gun." Further, R.M. told the social worker Father had fired his gun at "the pigs" and called the police officers "bad people."

According to the detention report, Father and Mother have a lengthy history with child welfare services. Although they have not been named as parties in prior dependency proceedings, they were the subjects of more than a dozen Agency referrals. Several of the referrals alleged that Father and Mother had engaged in heavy alcohol and cocaine use in the presence of their children, including R.M. In connection with one of these referrals, Father and Mother refused to drug test.

The detention report further indicated that members of Father and Mother's household have made numerous calls to the police department for law enforcement services. During one call (dated August 13, 2017), Mother told the police she and Father had gotten into an argument. She stated that Father had consumed alcohol, an antidepressant medication, and possibly cocaine, and possessed a firearm and a BB gun. Mother left the residence, but the police were ultimately unable to contact Father. During another call for services (dated September 2, 2017), a family member reported to the police that Father had been drinking alcohol, had threatened to hold R.M. as "a child hostage," and had used a knife to slash furniture in the home. Law enforcement responded to the service request, but Mother ultimately declined assistance.

At the detention hearing, the juvenile court appointed counsel for both parents, elevated Father's paternity status to presumed father, found that a prima facie case had been made that R.M. was a person described in section 300, subdivision (b), and detained the child with the paternal aunt. Further, the court ordered reunification services for both parents, including parenting classes, therapy, domestic violence referrals, and transportation and housing assistance.

C. Jurisdiction and Disposition

In advance of the jurisdiction and disposition hearing, the social worker interviewed R.M. a second time. During the interview, which the social worker memorialized in the jurisdiction and disposition report, R.M. denied that Father or Mother had perpetrated physical or sexual abuse against her. She disclosed, however, that she had witnessed domestic violence in the household and that her parents got

"drunk" and consumed alcohol "every day." According to R.M., Father "was soo [sic] drunk" during the SWAT standoff. She told the social worker that she worried when her parents yelled, and she planned to tell them "to stop yelling, and to stop getting drunk." R.M. added that she wished there were no more alcohol in her house.

The social worker prepared an initial case plan that the Agency filed with the jurisdiction and disposition report. That plan required Father to participate in a domestic violence program, general counseling, and a parenting education program, as well as substance abuse services. In particular, the substance abuse portion of the initial case plan required Father to begin outpatient substance abuse services and submit to random and on-demand drug and alcohol testing at the Agency's discretion. Under the case plan, any missed, incomplete, or diluted tests would be considered positive tests.

The juvenile court held a jurisdiction and disposition hearing and, at the parents' request, set the matter for a contested hearing. In advance of the continued hearing, the Agency filed an addendum report recounting an interview the social worker had conducted with Father at the correctional institute in which he was incarcerated. Father told the social worker he did not even know that police officers were at his house during the standoff because the officers were shielded from his view by shrubbery. Regarding substance abuse issues, Father denied using drugs, but admitted to using alcohol. Father also admitted to marijuana use, but contended he uses marijuana solely for medicinal purposes to alleviate pain from two recent back surgeries. He claimed he uses marijuana only when R.M. is asleep and supervised by a sober adult, and he keeps his marijuana in

a locked box away from R.M. Father requested reunification services and stated he would "do anything the Agency request[ed] to get his child back."

At the contested jurisdiction and disposition hearing, the juvenile court received the detention report, the jurisdiction and disposition report, and the addendum report into evidence. At the Agency's request, the court struck the provisions of the parents' case plans requiring them to undergo outpatient substance abuse treatment. Father requested that the court also strike the case plan provision requiring him to submit to random and on-demand drug and alcohol testing. He argued he did not have alcohol or substance abuse problems and there was no nexus between his alleged drug or alcohol use and his care for R.M. The court, however, sustained the allegations of the petition, declared R.M. a dependent of the court, and found the amended case plans appropriate. The court ordered the Agency to provide reunification services and Father to comply with his amended case plan, including the drug and alcohol testing provision.

DISCUSSION

Father's sole contention on appeal is that the juvenile court erred in requiring him to comply with the drug and alcohol testing component of his amended case plan. He claims the evidence did not establish that he abused alcohol or drugs and, furthermore, there was no nexus between his alleged use of drugs or alcohol and the jurisdictional allegations sustained by the juvenile court.

With certain exceptions not relevant here, section 361.5 requires the juvenile court to order child welfare services for the minor and the minor's parents to promote reunification of the family when the minor is removed from parental custody. (§ 361.5.)

The court has "broad discretion to determine what would best serve and protect the child's interest and to fashion a dispositional order in accord with this discretion." (*In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1006.) But the court's authority to fashion reunification orders is not "unfettered," (*In re Nolan W.* (2009) 45 Cal.4th 1217, 1229), as reunification orders must be "designed to eliminate those conditions that led to the court's finding that the child is a person described by Section 300." (§ 362, subd. (d).) Further, the court-approved " 'reunification plan " 'must be appropriate for each family and be based on the unique facts relating to that family.' " " (*In re Nolan W.*, at p. 1229.) "We review the propriety of court-ordered reunification services at this stage for abuse of discretion." (*In re D.C.*, *supra*, 243 Cal.App.4th at p. 56.)

Father contends the juvenile court erred in approving the amended case plan containing a drug and alcohol testing provision on grounds that R.M. is "not the child of a drug or alcohol abusing father." The record, however, contains ample evidence from which a court could reasonably reach a contrary conclusion. During one of her interviews with the social worker, R.M. reported that her parents "get drunk" and "drink every day." She expressed her wish that there would be no more alcohol in her home and planned to tell her parents "to stop getting drunk." The maternal aunt also reported to the social worker that a large bag of anti-psychotic pills and narcotics was recovered from Father's home. Moreover, Father himself conceded he uses alcohol and marijuana, the latter albeit for medicinal purposes.

Additionally, the jurisdiction and disposition report documented numerous Agency referrals based, in whole or part, on Father's consumption of alcohol and/or

drugs. In particular, the Agency received reports of emotional abuse and general neglect based on both parents' heavy consumption of alcohol and cocaine in the presence of R.M. and her siblings. Further, law enforcement responded to multiple requests for assistance involving incidents in which Father used alcohol and/or drugs. In one incident, Mother alleged she had been in an altercation with Father after he consumed alcohol, an antidepressant medication, and possibly cocaine. In a second incident, a family member reported that Father had wielded a knife and threatened to hold R.M. as "a child hostage" after consuming alcohol. On this record, there was sufficient evidence from which a court could reasonably find that Father had alcohol and substance abuse problems.

Father contends that irrespective of whether he uses alcohol or drugs, the juvenile court *still* erred by approving the drug and alcohol testing provision of his case plan because there was no "nexus" between the dependency allegations sustained by the court and Father's use of alcohol and drugs. As an initial matter, we do not accept Father's contention that there was no connection between his alcohol and substance use and the allegations of the dependency petition. R.M. informed the social worker that Father "was sooo [sic] drunk" during the SWAT standoff. Separately, the paternal aunt opined that Father likely was under the influence of prescription medication during the confrontation. Thus, there is evidence in the record directly linking Father's use of alcohol and drugs to the events giving rise to the dependency petition.

In any event, "[a]t disposition, the juvenile court is not limited to the content of the sustained petition when it considers what dispositional orders would be in the best interests of the children. [Citations.] Instead, the court may consider the evidence as a

whole." (*In re Briana V.* (2015) 236 Cal.App.4th 297, 311.) Thus, the mere fact that the juvenile court did not sustain express allegations of alcohol or substance abuse is not dispositive of whether such abuse impedes family reunification efforts and, if so, whether the court may fashion a dispositional order to address the abuse. (*In re Christopher H., supra*, 50 Cal.App.4th at pp. 1006-1008 [court did not err in approving reunification plan requiring father to undergo substance abuse evaluation and testing, even though court found allegations based on alcohol-related problems unproven].)

Based on the evidence connecting Father's alcohol and drug use to several Agency referrals, law enforcement service requests, and the SWAT incident precipitating this case, the juvenile court was well within its discretion in concluding that Father's alcohol and drug use posed an obstacle to reunification. Further, the court did not exceed the bounds of reason by approving drug and alcohol testing, in particular, to address this obstacle. (*In re Christopher H., supra*, 50 Cal.App.4th at p. 1008; *In re Natalie A.* (2015) 243 Cal.App.4th 178, 187.) Such testing will hopefully incentivize Father to refrain from the use of illicit drugs and excessive alcohol consumption, while facilitating his compliance with other provisions of his case plan. (*In re Christopher H.*, at p. 1008.) It will also help monitor Father's consumption of medicinal marijuana to avoid any deleterious effects from such consumption. (*In Alexis E.* (2009) 171 Cal.App.4th 438, 454 [father's use of medicinal marijuana could be "monitored with use of drug testing"].)

For all these reasons we conclude there was no abuse of discretion in ordering drug and alcohol testing as part of Father's case plan.

DISPOSITION

The order is affirmed.

DATO, J.

WE CONCUR:

McCONNELL, P. J.

GUERRERO, J.